

REMARKS

ON THE

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BILL

To Prevent FRAUDS

Committed by

BANKRUPTS.

WITH

Observations on the Effect it may have
upon TRADE.

bill read 31 Oct. 1705

L O N D O N :

Printed in the Year 1706.

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LONDON:

Printed in the Year 1766.

REMARKS on the BILL

To Prevent F R A U D S

Committed by

Bankrupts, &c.

BEFORE I come to the more immediate Subject of this Book, *viz.* the Bankrupts Bill, it cannot be a-miss to enter a little into the History of its Introduction, Proposing, and Passing in the Parliament; in which, if I have had any Share, I am very willing to leave the World to censure me, as the Effects of this Bill are or are not of general Good to the Trade of *England*, and, in short, to the whole Nation.

I need not remind the Reader of the unhappy Circumstances of Trade in general, occasion'd by a long War, great Losses at Sea, and a general Stop upon the *Spanish* Trade.

Nor was our Loss at Sea singly occasion'd by the War, though on that Score Trade had felt several very severe Shocks, particularly in two *Barbadoes* Fleets, one East Country Fleet, and a Multitude of other Ships which fell into the Enemies Hands; but, as if Heaven had particularly stretcht out its Hand to touch us in the most sensible Article, our Trade; has happen'd unusual Tempests which made

strange Havock among our Shipping; and that more than any former History can remind us of in so short a time.

Particularly the Great Storm, on the 27th of *Nov. 1703.* in which an innumerable Number of our Ships perished; and the Loss among the Merchants was incredible.

The very same time Twelve month, we had so many Storms, tho' less severe, that Abundance of Ships were cast away on every Coast of *England*, but particularly on the North.

In *August*, last Summer, a Tempest, equally violent as the Great Storm, sunk 14 *Barbadoes* Ships, just come into *Plymouth* Sound, with all their Loading, and most of their Men; and made a dreadful Havock at *Portsmouth*, and Isle of *Wight*.

In *Barbadoes*, a Hurricane destroy'd, I think, Two or Three and Twenty of our Merchants Ships.

The *Jamaica* Fleet felt the Force of it at Sea, and were terribly scattered; some came stragling home, some fell into the Enemies Hand, some perished at Sea, and the rest with their Convoy made for *New York*, and *New England*, to repair having suffered extraordinary Damage.

These, and a Multitude of Circumstances, too many to reckon up here, fell heavy upon Trade, which added to the general Obstruction of the *Spanish* Trade, and Deadness of our Manufactures, had among others this most necessary Consequence, that an unusual Number of Trades-men, as well Merchants as others, sunk under the Calamity, and became Bankrupt.

Now, as in former times, the Liberties and Refuges Bankrupts had found became grievous and scandalous to the Nation; the Parliament at sundry times had made very severe Laws to prevent the Advantages which Insolvents took by those Retreats to injure and abuse their Creditors.

But when, as before, the Multitude of Insolvents increased to such a Degree, and many honest Families fell into the same

same Circumstances, the Severity of these Laws, design'd against Knaves, fell so severely on the the miserable and unfortunate, tho' honest Traders, that it began to move the Nation to Compassion.

The priviledg'd Places being suppress'd, the Rules of the *Fleet* and *Queen's-Bench* became so throng'd, and the Objects so melancholy, that some of the cruellest Creditors began to relent.

The *Escape Act*, as it was call'd, had fill'd the Prisons with a great Number of Debtors; who being committed without Bail, had no Hopes of ever being delivered, but by the general Jayl-Delivery of the Grave.

Under this Circumstance Matters stood, when one Mr. *Pitkin*, a Linnen-Draper, breaking for a very great Sum of Money, and that with all the dark Circumstances of a designed Fraud, Application was made to the Parliament by his Creditors for Relief against this notorious Cheat.

This produc'd the Form of a Bill in general against Bankrupts, but the Parliament being just coming to a Conclusion, and the Session at an end, there was no time to finish it as a Law; and so it was given over for that Year.

The Substance of this Act was very short, only to compel the Bankrupt to come in, and surrender himself, Goods, Books, and Effects to his Creditors; and to ascertain the Penalties and Punishments in Case he did not.

Upon the meeting of this present Parliament, this Bill was the first thing read in the House, and being committed to a Committee to consider of it, it lay before them a long time.

'Tis needless to recite here the Attempts made to put it forward, and by whom: The Bill was all this while a Provision only to punish; but as it seem'd a sufficient Foundation to answer both Debtor and Creditor, several Persons on both sides began to consider how to make it a compleat Act, and both to relieve the miserable but honest Debtor already
fallen:

fallen into Disaster, and secure Trade against the numerous Mischiefs of Bankrupts for the future,

And the Business now before me is, To propose how this Act may be rendered useful to these two happy Ends; and, if possible, to provide against and warn us of all the common Abuses of Knaves, which may pervert the End of this, and rob the publick of the Good that is so plainly design'd in it to both Parties.

But a little to pursue the History of the Bill: It was a great Advantage to the good Design of making a compleat Act, that there happen'd an Absurdity in the first Contrivance, which, when it came to be examined into, made it almost impracticable, as it was; and that was this,

The Act was to compel Bankrupts to surrender themselves and Effects to the Commissioners. Now the Case was thus, When a Commission of Bankrupt is taken out against a Man, the Creditors are at Liberty to come in, or not come in; he that refuses to come in, has indeed no Share of the Bankrupt's Estate, but is left to get his Debt how he can, and has a Right of Action against the Debtor as before.-----Tis true, if he recovers any thing, it shall be recovered again by the Commission; but he may lie still, and wait, and fall upon the poor Debtor at last.

Now to make the Debtor surrender all his Effects to the Commission, and yet leave him expos'd to all the Creditors that pleas'd to stand out, was first unjust to the Creditor, to share all among a few, and leave the rest without any thing; and barbarous to the Debtor, to force him to give up his whole Estate to a part of his Creditors, and leave him expos'd to the Mercy of the rest with nothing to pay.

From this Circumstance it seem'd so rational, either to force all the Creditors to come in, or to discharge the Debtor from them that stood out, that when such an Offer was made to the House, it was too reasonable to be opposed; and on the first Motion made in the House, it was ordered, *That the*

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Committee be empower'd to receive a Clause for the Encouragement of such Bankrupts as shall voluntarily surrender their Effects to the use of their Creditors.

This was the Birth of the following Law: For now it remain'd only to consider, what could encourage the Man to strip himself naked, and make an honest Surrender? ---- And the Answer was natural, *HIS LIBERTY*. What could you give him that would cost the Creditors less? What that he could value more? A Thousand Arguments offer'd themselves to usher this into the Bill, and little but mere Trifling was urg'd against it.

It was unanswerably argued to the faint Opposers of this Bill, That no Man could pay more than all; That to keep a Man in Prison, when you had stript him naked, was unchristian and unreasonable; That to make a Man surrender all he had, and not give him his Liberty, was to starve him, and put him to Death for Debt, which, however a Crime, was not yet made Felony by the Law; That to force him to surrender all his Effects, and not give him leave to work for Bread, was to force Men upon Perjuries, and all sorts of Extremities, for fear of perishing; That this would be the way to make more Bankrupts, and Bankrupts more fraudulent; since Desperation would now run them upon all possible Methods to secure their Effects abroad, and afterwards themselves, and so Commissions would be able to reach nothing; That to make Men desperate, was the way to make them Knaves; and as there never was any Law but some way or other might be evaded or avoided, this would put Mens Inventions upon the rack for new Methods to defraud their Creditors; That this would farther encrease the Complaint already made of our Trades-men taking Sanctuary in foreign Countries, and robbing the Nation of its People, since now not a few only of our Bankrupts, but all Bankrupts must go beyond Sea, to avoid a Law, by the Severity of which they must be so hardly treated; and a general Depopulation must

in time follow us, as far as extends to all our unfortunate Trades-men ; That not our People only, but vast Riches would be thus carried out of the Nation, all our Bankrupts being thus forced to carry their Creditors Estates with them to subsist them, and enable them to trade and maintain their Families abroad ; That this Law was unjust in its Nature, because 'twas all Penalty and no Reward, and had a Tendency to bring Men to a Necessity of Punishment, without any room to avoid it, since the Man was bound to Misery every way ; he was to be hang'd if he did not surrender, and starv'd if he did.

There were Abundance more Arguments used of the like Nature, which were never yet answer'd, and which made the Act appear so Rational, so Necessary, and so Christian, that few People oppos'd it of any Consideration ; and those that did were brought to this, that they could not object against the Bill, only they would not have had it pass'd till the next Session.

Against this was urged the present Necessity of the Bill, the Disasters of Trade having crowded us with Bankrupts, whom the Cruelty and Obstinacy of Creditors had driven to such Extremities, that they liv'd languishing in Prisons and priviledg'd Places, where they were forc'd to subsist, *and at an expensive Rate too*, upon the Estates of their Creditors, and upon those very Estate, which, upon the least reasonable Encouragement, they were willing to surrender : That this at last brought them to have nothing, either for themselves, or Creditors ; and then, having no hope of Deliverance, they went abroad, and the Creditors lost all that they might have had.

And indeed these things began to be so scandalous to the whole Nation, that even the Creditors themselves seem'd eager for this Bill, and, I am forward to say, will be the greatest Gainers by it.

Nothing was more frequent than for a Bankrupt to make a good Offer, perhaps of 5 to 10 and 15s. *per l.* to his Creditors, which all but Two or Three Men would be willing to accept:-- And these Two or Three Men, either rashly, and inconsiderately obstinate, or having secret Expectations of more advantageous Offers, or from Malice, Revenge, or a hundred various Causes, absolutely reject all Composition: Now by the harden'd Cruelty of these Two or Three, the Man is kept in the Mint or Rules in Misery and Distress, till in time a Wife and Family and other Circumstances waste the whole Sum; the rest of the Creditors lose the Offer they had made them, and the miserable Man has nothing at all to pay.

I could go on here to publish, *and did design it*, a melancholy Journal of the Barbarities and unheard of Cruelties of Creditors in many particular Instances, which Posterity would hardly believe could be practised in this Protestant Nation, where we pretend to generous Principles, and to practise Compassion to the miserable: I could give a dreadful List of the distressed of Families, who have really perish'd under these Barbarities; and whose Miseries his Heart must be harder than mine that can bear to relate.

I choose therefore to cover them with an universal Blank, that they may not rise up in Judgment, even in this World, against the Honour of the Protestant Religion, and the general Character of my Native Country: and since the Progress of it is stopt, I desire to have the Particulars forgotten, by which we were labouring in *England*, to recover the Name of the most barbarous Nation under the Sun.

Nor shall I record, to their Reproach, the Names and Endeavours of some Men to loose a Bill of such general Usefulness to the Nation, from their own Concern in the Cruelties aforesaid, and for the Sake of private Cases, where they had some Debtors under their Hands, who they were loth should escape them: I congratulate the poor Men that are thus delivered from the Power of unreasonable Creditors; and I con-

gratulate those Creditors too, in their being restrain'd from being so wicked as they would be, and being forc'd to be moderate, though against their Wills.

These Men indeed made some Clamours at this Bill, upon the Lords ordering the Merchants to come up, and give their Opinions; but the Arguments were so weak, and the People appear'd so hot, and so visibly partial, that the Lords, convinc'd by the Reasonableness and Justice of the Bill, agreed to it with some Amendments; to which Amendments the Commons agreed; and the Bill obtain'd the Royal Assent the 19th of March, 1705. The Substance of which is as follows.

THE Bill Enacts, That whosoever shall become Bankrupt after the 24th of June, and shall not, within thirty Days after Notice given, that a Commission of Bankrupt is issued against them, surrender themselves to the Commissioners, &c. and submit to be examined upon Oath, &c. and conform to all the Statutes already in Force against Bankrupts, and discover how, and in what manner, they have disposed of their Estates, and also deliver up to the said Commissioners all such Goods, Wares, &c. as at the time of such Examination is in their Custody, &c. wearing Apparel excepted; in Default, or wilful Omission thereof, upon lawful Conviction, shall suffer as a Felon.

All Persons who shall surrender and conform as above shall be allowed 5 per Cent. of the Net Produce of the Estate so surrendered, and shall be fully set free and discharged from all former Debts; and if arrested afterwards, shall be discharged on common Bail, and may plead in general the Cause of Action accrued before they became Bankrupt.

The Allowance of 5 per Cent. shall not exceed 200 l. in the whole, nor be allow'd at all, unless the Effects amount to 3 s. in the Pound; but the Commissioners to be left to Discretion what to allow.

Persons

Persons who conceal any of the Bankrupts Effects, or receive any Trust for them, if within thirty Days after Notice given them, they do not discover them to the Commissioners, shall forfeit 100 l. and double the Value concealed, but if they discover voluntarily, shall have 3 per Cent. for all that shall be recovered by such Discovery.

Commissioners to have Power to state open Accompts, and shall accept the Ballance in full Payment.

No Bankrupt that has given above 100 l. on the Marriage of any of his Children, unless they can prove upon Oath they were then worth more than the said 100 l. all their Debts paid; or that hath lost in one Day the Value of 5 l. or in the whole, 100 l. within a Year, before he became a Bankrupt, at any sort of Game or Play, shall have any Benefit by this Act.

Former Bankrupts, against whom Commissions have been issued before the 10th of March, have Liberty to come in till the 24th of June; and on the same Terms of Surrender shall have the Benefit of this Act.

No Discovery upon Oath as above shall entitle the Bankrupt to the Benefit of this Act, unless the Commissioners or the major part of them certify to the Lord Chancellor or Keeper, &c. that the said Bankrupt has conform'd to this Act, and that there doth not appear any Reason to doubt the said Oath and Discovery; and unless the said Certificate shall be confirm'd by the said Lord Chancellor or Keeper, &c. or Two of the Judges, to whom such Certificate shall be referr'd, and the Creditors to be heard if they desire.

No Expence to be allowed to the Commissioners for Eating and Drinking; and if any Commissioner shall order any such Expence to be made, &c. to be for ever disabled to act as a Commissioner.

I confess I cannot but wonder why the Gentlemen that oppos'd this Law, *so universally desir'd*, should be so eager against it.--- I am loth to suggest *what some for want of Charity are of the Opinion is too true* that these Men, whether Drapers or others, taking large Credit themselves are loth to be depriv'd of the Opportunity when they shall find Occasion to break to their Advantage: I won't affirm, that these Gentlemen having always practis'd the scandalous Method of standing out in Compositions, to get collateral, clandestine Securities, are loth to venture standing upon even hand with other Men in Cases of Bankrupts; --- Nor will I say they frequently set up young Men without Stocks, give them large Credits at first; under the Shadow of which Sham Beginnings they get into other Mens Debt, and pay these off with their Neighbours Estates: I won't say they all do, as one of them own'd to me he did, *viz.* stretch the Law to get a Man out of his House, and then swear him a Bankrupt, though he never had committed the least Act of Bankruptcy, but what they forc'd him to.

I won't say, (tho' I doubt 'tis too true) that they have by Cruelties and Oppressions, got already seperate Payments and private Considerations from Bankrupts, under their Power, and made them purchase their Favour at the Price of abusing the rest of their Creditors, which separate Sums *must now be refunded*, and the Knavery of it appear.

But this I will say, that unless these or such as these are the Reasons, 'tis a perfect Mystery to the World, why these Gentlemen, or any Man of Trade in *England*, should be against this Bill; and I wonder they have not attempted to show some better Reasons for it.

And this I must say, That this Act sets all Creditors on an equal foot with one another; and takes away all the Advantages obstinate designing Knaves had over honest Men: Creditors will now fare all alike; they will go Hand in Hand to make the best of the Bankrupt's Estate, and all have their Share in it.

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I shall now enter a little into the probable Advantages of this Bill to the Publick, as well as in particular to both Creditor and Debtor; and then descend to the Methods proper to be taken on both Sides, in the Pursuit of this Act, to make it useful to the Publick: And, I doubt not, before I have done, the Gentlemen who seem'd to be against this Act will be very glad it has pass'd, and very sensible with how much mistaken Zeal they oppos'd their own Benefit.

I shall not in the Advantages of this Bill insist much upon the Debtor's Part; 'tis plain, his Advantage consists in obtaining his Liberty, to try his Fortune again in the World, and go to work for Bread, that he may support his Family, and live.---- If he has a more than common Stock of Principle, he has room given him, if ever God in his Providence trusts him again with an Estate, he has an Opportunity put in his Hand to recover the Reputation of his Integrity, which having suffered some Scandal, he may restore by a gratuitous Payment of those Creditors, from whom he has been legally discharged. And I cannot quit this Head, without earnestly moving such Men to remember, that the Obligation of Conscience must remain as far as with corresponding Circumstances they can reasonably answer things, besides a Debt of Gratitude to such Creditors in particular, who being kind, tender, and forward to comply with reasonable Offers, have been untainted with the Cruelties that have helpt to ruin and destroy the Nation.

Again the Vicissitude of Fortunes must weigh with those Gentlemen, that have left in them any thing of a Sense of humane Misery; you Gentlemen that being delivered by this Act from the Cruelty and Fury of your Creditors.--- Perhaps some of you may live to see those very Creditors reduc'd and Bankrupt, when you are free again, and flourishing.

Remember then the Condition you are in now, remember who sets up, and who pulls down, and double the Generosity of your Principle, by the timing your Honesty to their Necessity;

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necessity; let your Compassion to their Misfortunes testify how well you merited Compassion in your own; and never reflect on their ill Treatment of you, if they are of the Number of your present Opposers, but heap Coles of Fire upon their Heads, by letting them see your Sence of Honour and Conscience has an absolute Dominion over your Passions and Repentments; that you are Gentlemen enough to forget Injuries, and Christians enough to relieve your Enemies.

Perhaps some may think this Labour lost, but I cannot ask Pardon for the Digression; if it moves but one Man in Ten Thousand to act the generous and honest part, I am satisfy'd, and shall not think I have labour'd in vain.

But I must own, after all, the Advantages of this Bill seem to be vastly great and extensive, beyond what I can touch at; on the part of the Creditor, on the part of Trade in general, and on the part of the whole Nation.

The Effect it has on the present Distresses of Bankrupts already insolvent, which some merciful Men, Thanks be to their Ignorance, would have had omitted, are indeed considerable; and made so at this time by the unusual Multitude of such unhappy Cases, which now lie upon the Nation.

But these are Trifles to what's to come, and though I am very glad to see the Generality of the Trading part of the People are sensible of it; yet I cannot but a little enter into the Particulars of it, for the Sake of those who pretend to profess some Ignorance upon that Account.

1st. I think I may affirm, we shall not have so many Bankrupts as we had before, no not by a very great Number; and this I make plain from these Consequences.

1. That the Estates of Bankrupts being immediately surrendered, and fairly divided among the Creditors, the Fall of one Man will not have the same fatal Effect upon others, as it formerly had, when they lost Stock and Block; and when Dividends being postpon'd, and by the Knavery of Commissioners, perhaps wholly sunk, the Creditor has not been able to wait, but sinks under the Loss.

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2. **Obstinate Creditors** can no longer make willing Creditors loose their Estates, and force the Debtor to live upon the Stock that should be divided among them; by which means Losses will not fall so heavy upon the Sufferer, which now is too often the Ruin of the Creditor as well as Debtor, and makes one follow the other to the End of the Chapter. But now all the vast Sums squander'd away in the Mint, Rules, Prisons, Commissions of Bankrupt, in Suits at Law, bribing of Officers, and Prison-keepers, and the like will be honestly shar'd among the Creditors, to help support them under the Loss, which of it self is often times Load enough, not to need the Addition of such destructive Articles.

3. The fraudulent Bankrupt has his way hedg'd up; he will now find it so difficult to break thro' the Bars and Bolts of the Law, that where 'Ten ventur'd before to rob their Creditors, and contrive a Rupture, it is probable, and I hope rational to believe, scarce one will do it now; since whoever he is that will attempt to break by Design, has but two Doors open for him, *viz.* Perjury or Banishment. Now tho' there may be found a Villain so harden'd, such an Incendiary in Trade, that to amass an Estate will venture upon God and Man, and neither values Banishment out of the Kingdom of *England*, no nor out of the Kingdom of Heaven; that will forswear himself to stay, or purchase the Brand of Infamy, and be gone; yet all Men will allow, such Difficulties, such Hazards, and such Consequences attend both, that Men will not be so forward to venture.

He that will fly and abandon his Country and Friends, indeed has the safest Part, and may go, and even that way the Nation is well rid of him, and he can never come home again: He is banish'd for Life with that infamous Title of a common Thief; and if ever, *Pitkin* like, he should be recovered and brought back by Force, he goes directly to the Gallows, as he deserves.

He that will stay at home, mortgages Soul and Body to make a Reserve, if he has any separate Hopes, he must swear as thro' a 10 Inch Plank: At the same time he is hedg'd about with Dangers; and if he has not laid his Matters very nicely together, if either for good Will or ill Will it should ever come out, he is gone, and he dyes without Benefit of Clergy: If it never comes out, he lives in a constant Dread of it, is a Slave to every one he has trusted; and besides the Trifle of the Perjury, and little regarded Terror of something hereafter, which sometime or other may come upon him hand in hand with Death, there is a settled Uneasiness least sometime or other he shall be betrayed even by himself.

Will any Man doubt whether fewer Men will venture than did before. 'Tis plain, Gentlemen, now, there will be nothing to be got by breaking, but what will be had at such a Price, that the Purchase is not worth the Repentance: No Man in his Wits will venture; he must be compleatly a Villain that will go, and he must have Walls of Brass about his Heart, and be fenc'd against all sorts of common Terrors, that dare stay here; That can look Justice and his Creditors in the Face with a Lye, and keep a steady Countenance with a Load of intollerable Guilt.

That perhaps some such Men may be found is not unlikely, but that equal Numbers of them to what were before should be seen, is highly improbable; and were there no other Advantage to Trade from this Bill, than the lessening the Numbers of Bankrupts, it is an Article worth all the rest.

2. In the next Place, there will be fewer Commissions of Bankrupt issued than usual; and, if I may guess right, I am of the Opinion not One to Five.

When Creditors know, that the Debtor, upon delivering his Effects upon Oath, shall obtain his Liberty, to what purpose should they take out a Commission? If the Debtor offers his Effects, and a voluntary Oath, and they see Reason to believe him sincere, what Occasion is there of the Commissioners?

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When the Debtor knows, that upon a Commissions being taken out, he must come in, and surrender, upon Pain of Death, to what purpose should he decline making an Oath, and honestly coming in at first?

At the Beginning of a Disaster, when a Trades-man falls, he is generally tender, willing to be fair, open, and forward to make a free Offer; Retreats and Time, put Men upon Shiftings and Subterfuges, Mints, Rules, and the Society there, harden them in their Circumstances: This Act takes them into its Protection at first, upon stated Terms easy for the Creditor, and safe for the Debtor, and secures him from falling into Hands that may debauch his Principles, and prompt him to more Evil than he understood before: And, I believe, no body will dispute with me this Proposition, That were all Debtors complied with in the first Offers to their Creditors, the Creditors would have been Gainers, and the Morals of the Debtors have been better preserv'd.

If then the Man in his first Sorrows is clos'd with his all, honestly tender'd, as frankly accepted, while the Man is sincere, and willing to be honest, all Men will allow there will be no need of Commissions; the Charges, Dilemma's, and long Croud of Inconveniencies that attend Statutes, will be sav'd, and even this way this Act will be a publick Benefit to Trade.

This Bill is a kind of Truce between Debtor and Creditor; the Debtor is fallen into Decay, and coming to his Creditor, as his injur'd Friend, tells him, how willing he is to make him Satisfaction to the utmost of his Capacity, and to give up all he has in the World to that End; and the Creditor by this Act is oblig'd to accept it: The Creditor comes to the Debtor, and tells him, " You have taken my Goods, and
" now you are not able to make me Satisfaction, pray be so
" just to me to make Satisfaction as far as you can, and give
" me up what you have, for 'tis all mine; and by this Act he is bound to comply with him: And both these are conso-

nant to the highest Reason, as well as agreeable to Humanity and Christian Dealing one with another.

4. All the War of Revenge, all the Persecutions of Malice and Fury, ruining Families for the Sake of it, all cruel Imprisonments, murdering Warrants, perpetual Confinements, Perishings, and Starvings in Jayls and Rules, will be at an End by this Act.

The Cries of oppress'd Families, starving by the inexorable Cruelty of merciless Creditors, will be heard no more among us; Debtors will be no more made desperate by the Creditors refusing the sincerest Offers, and Families obliged to live and spend the Stocks of their Creditors.

Above all the Grievances, both real and pretended, of Mint, Rules, Prisoners at large, Protections, and all the long roll of Law Shams, equally mischievous both to Debtor and Creditor, will now be entirely sunk of Course: The Keepers of the Prisons Warden, Marshal, &c. will have no Men in their Hands, *at least upon the Article of Trade*, that either can ask them any Favour, or to whom they can give any Protection. Thirty Days the Mint may skreen a Bankrupt, but after that he shall be demanded as a Felon, and be fetch'd even from the Horns of the Altar.

Pity and Compassion will now cease to be a Debt to Men in Misfortune, for who would be mov'd with the Miseries of those, who, if they will be honest, may be safe and refuse it.

Here will be no Shelterers in these Sanctuaries above the Law, this Act, with no other Coercive than that of Mens own Interest, will bring Men back; the true Sanctuary of an honest Man will be in the Arms of the Law: Instead of flying from the Law for fear of Punishment, he now will fly to the Law for Protection; instead of absconding and hiding himself from his Creditors, now he will run to seek them out, offer them all he has as their Due, and demand his Liberty as his Right, which they have no Power to abridge him of, or deny him.

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It remains now to attempt two things; first, to anticipate those People, who, by the Craft and Subtilty of the times, always furnish themselves with Methods to evade the Laws.

2. To direct Men who honestly design to do what this Law obliges them to, in order both to the Satisfaction of their Creditors, and their own Liberty.

As to evading this Law, I must say this to it, that I believe no Law has been lately made less subject to the Chicane and Artifice of Men of Cunning than this; though it is not without its weak part neither: I shall endeavour to examine it strictly.

1st. This I pretend to affirm for the Satisfaction of the objecting Creditor, there is not one Flaw, not one loose Place, not one Inch of Room for the Debtor to creep out by, on your Side; if he is once a Bankrupt, you have him fast, he must surrender himself, Books, Goods, and Effects, and swear they are all he has, you have left him nothing but the Cloths on his Back, not a Bed to lie on, not a Knife to cut his Bread with, nor a Penny to buy him any; and if he fails in the least Point, he lies at your Mercy for his Life.

I know 'tis objected, that the Felony part will never be put in Execution.---- I would advise no Debtor to run the Risque, especially if any of those Gentlemen happen to be their Creditors, who have so vigorously appear'd against this Bill: I cannot question, but that Creditor, that by an Escape Warrant would put his Debtor in Prison for Life, would also take away his Life, if the Law furnish'd him with Power to do it.

If there is any weak Part in this Law, 'tis I think on the Debtor's side.

1. When a Man breaks, and has surrendred all he has in the World, it seems to leave him at the Mercy of the Commissioners, whether they will believe his Oath, and whether they will certify for him to my Lord Keeper, or no.

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I confess, I press'd hard in Parliament for an Amendment to this Part, and was for adding these Words, "*Which Certify that the said Commissioners are hereby requir'd to make in*" Days after the said Oath, or to shew Cause, &c. Which Amendment was so reasonable, that I doubt not it would have been agreed to by both Houses, had there been Time for it.

But I would have no Man discourag'd for want of this Clause, for the Nature of the thing, and the true Design of the Clause join together to shew the Commissioners their Duty in this Case; and as the Commissioners of Bankrupt are but the Lord Keeper's Servants and Deputies, he is their Judge; and it shall not be sufficient to a Commissioner to say to the Bankrupt, I will not certify that I do believe you, or I will not believe you, but he shall certify that he does, or does not, and upon his Refusal, my Lord Keeper is too just not to oblige him to it.

And the Words of the Act explain this, which does not say, Unless the Commissioner shall certify that he does not doubt, but unless he shall certify that he *has no Reason to doubt*; so that the Liberty of the Bankrupt does not depend upon his *will* or *will not*, but upon the Reason he has for it; of which Reason I presume no Commissioner will pretend to say my Lord Keeper is not the Judge.

The Commissioner then is to certify, or he is not; if he certifies to the Release of the Debtor yet it is not decisive, for my Lord Keeper must confirm it, and the Creditor shall be heard; what is this but making my Lord Keeper judge of the Commissioners Certificate, in behalf of the Creditor? *On the oth. r Hand*, he certify in the Negative, shall not the Lord Keeper be Judge of his Reasons, and the Debtor be heard, this would not be consonant to Reason or Justice at all.

Again, if the Lord Keeper shall be Judge what he shall certify, shall he not be Judge whether he ought to certify at all or no?----- Our Laws are grounded upon.

upon Reason ; and this would be to act contrary to Reason, and consequently against the Sense, Intent, and Meaning of the Act it self, and no Debtor need fear Relief against such an Oppression.

My Lord Chancellor, Lord Keeper, &c. has the absolute Power of naming the Commissioners to every Statute ; he that should offer such an apparent Partiality, and refuse arbitrarily to certify to a Debtor's Discharge, or his Reasons against it, must have very mean Thoughts of my Lord Keeper's Justice, if ever he expected to be trusted in a Commission again, and have the Liberty of a Debtor, or the Estates of Creditors committed to him.

Nor can the Commissioners teaz the Debtor with that usual ruinous Cavil of the Creditors, we are not satisfied, and you must make a farther Discovery, we believe this is not all ; for here the Surrender and Oath is actually finish'd, before the Certificate can be demand'd : The Discovery is perfect, or it is not ; if it is not perfect, the Commissions know it, or they do not ; if they know it, the matter of a Certificate is at an end, the Man must be indicted for Perjury, and die as a Felon ; if they do not know it, yet they must certify.

But they may have Grounds to suspect ; these Suspicions then must be Legal Suspicions or Moral.-- A Legal Suspicion I do not understand, and cannot think any thing can raise justifiable Doubts in this Case, but a moral Assurance, deficient only in Form and literal Points ; and of all these, my Lord Keeper shall without question be Judge.

Again, should Commissioners refuse or delay their Certificates in such Cases as these, it would quite invert the Design of this Act, which really is, to have Bankrupts surrender their Effects ; and if once the Commissioners render the Debtor's Liberty precarious, we shall run back into worse Disasters than we were in before : Debtors will all fly from the Terror of the first part of the Act, being not secur'd of the Mercy of the second.

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This would be, *indeed*, to make it a Law, To banish Bankrupts, and their Effects, beyond Sea, and not a Law to prevent their Frauds.

These Reasons, I hope, will be sufficient to move the Bankrupt to surrender without Fear; and to let the Commissioners know, that to refuse them Justice in this Case, will be but a vain Attempt to serve private Interests, and ruin the Design of the Act, in which perhaps they may find themselves overrul'd by the Lord Keeper, and used as they deserve.

I had some Thoughts here, to have answered the weak foolish Objections against this Act.

As that People will break the faster for it; that they will run on to the last Gasps, and being sure upon what foot they shall be accepted and discharg'd, will stand as long as they can; that when broke in any tolerable Circumstances, they were always well treated before, and the like.

That any Man will break *for the Sake of beginning again with 5 per Cent.* is too absurd to need an Answer; that Men will be encourag'd to run *to the last*, is just arguing against Fact; 'tis plain, this Act takes all possible Care to encourage them to surrender *in time*, by an Encouragement of *5 per Cent.* and none, if they do not pay *8 s. per l.* 'Tis as plain, Men held out to the last Gasps before, by the Terrors of *ill Usage* they expected if they fell. As to Peoples being always kind, when Debtors offer high, there are such innumerable Instances of the contrary that I refer them to Practice, particularly of a late Citizen and Draper, who perish'd in Jail, and, as some say, of meer want, under the Severity of a Statute, when one Ship brought home Effects for him but a few Days after his Death, which, added to what they had before, was sufficient to pay all his Debts, and *5 s. per l.* over; and yet they were so far from Compassion to him, that they would neither supply him with Food, or Physick, but let him dye under *their Commission Mercy*.

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I could give innumerable Instances of the like Trade Lenity, sufficient to warn Debtors from throwing themselves upon the Mercy of their Creditors ; but 'tis too obvious to want any such Illustration.

The remaining Question is, What must the Debtor do now, to obtain the Justice of this Law at the Hands of his Creditors ?

The Answer to this is short and direct.

1st. Be very plain, genuine, and sincere on your part, and, making no Reserves or Hesitations, give such evident Demonstrations of an untainted Integrity, that no Creditor or Commissioner, without blushing, can have the least Jealousy, or the least Shadow of Suspicion, that the worst Enemy cannot have the Face to deny you the Certificate. *There is something in Truth*, something in *Native Honesty* so just, so genuine, so natural, and so free, that even Malice it self submits to the Power of it, and Envy is asham'd to appear against it.

2. If such a Behaviour gives you no Advantage with mercenary brib'd Commissioners, and it should be your Misfortune to meet with such, depend upon it, it will stand your Friend with my Lord Keeper ; *the Power of Truth* will prevail there, and Honesty will be too conspicuous not to be discern'd by a Judge so impartial, and so penetrating as his Lordship is allow'd to be, by Men of all Parties.

I know, 'tis recommended by some People to fly to politick Methods, and make, as they call it, sure Work with them ; these are such as follow.

1. To those who are already Bankrupt, and who are left to their Liberty, whether they will come in or no ; that they should state to the Creditors what they are able to surrender, and capitulate with them to consent to their Discharge, or not agree to the Surrender.

2. To those hereafter who are oblig'd to come in upon Pain of Death, to secure all their Effects possible at the first Rupture, and then make Conditions with the Commissioners and

and Creditors, during the Thirty Days, which Conditions if they will accept, they are discharg'd of course ; if not, they have Thirty Days to prepare to be gone in.

As to these things, I confess, if Commissioners and Creditors appear refractory and scrupulous, and refuse Men their Liberty after fair Surrenders, it will drive People to such things, and more that I could mention ; and 'tis a good Caution to Commissioners and Creditors, not to trapan their Debtors into Surrenders, and then trick them into Prisons, and refuse their Discharges ; and for this end I name these things.

But that which clears up the thing to me, is, To what End should the Creditors or Commissioners deny the Man his Discharge? --- If by delaying it, they could hope for farther Discovery, there was something to be said for it ; but the Debtor is foreclosed in that by his Oath, and the Penalty of Felony on an imperfect Surrender.

If they can discover any thing he has reserv'd, though after the Discharge, he forfeits the Liberty they gave him, and his Life too. To what purpose then can they deny the Certificate? It must be meer naked Malice, and ungrounded Prejudice ; and I believe most Commissioners will be not very forward to show themselves to my Lord Keeper in that, or to run the Risque of his Lordship's Censure.

They cannot put him off here with the Suggestion, that they do not believe him, and that he must think of a farther Discovery ; for a farther Discovery is his Destruction, and lies upon them to find out, and detect him in, not for him to discover.

I cannot omit to examine here what may entitle the Bankrupt to the Honour of the Penalty of this Act, I mean the Gallows: And I think 'tis necessary to hint it, as well to warn him what will condemn him, that he may avoid it, as to prevent needless Terrors upon well meaning Men, and the needless Awe which some Creditors, I understand already, think to fix upon their Debtors, to fright them from taking the Benefit of this Act.

1. It is not every Error in Accompt, Mistake in casting up, wrong Ballance, or over or under Appraisement of things, will bring a Man in Danger of this Act; --- but it is in Case of any *WILFUL OMISSION*; the Act is exprefs in that, and no Advantage can be taken where the Omission does not appear wilful, and with Design to defraud the Creditors.--- Nor, with Submission, is it the Business of the Debtor to State and Ballance his Accompts: 'Tis his Business to deliver up his Books just as they stood into the Commissioners Custody, and they to have the Stating and Ballancing the Accompts themselves; otherwise the Bankrupt Stating things in the Books may give him Opportunities to make Concealments which he could not do before.

2. Nor do any former Concealments from Creditors entitle a Bankrupt to the Penalties of this Act, provided they are fairly acknowledg'd, and laid open now; and therefore this Act seems to me exactly calculated to make Knaves honest Men, and to put an End to the former secret Clue of Frauds, which on both Sides, as well Creditor as Debtor, occasion'd many an honest Man to lose his Estate.

I do not wonder therefore to hear Men exclaim against this Act, who have got large Shares of the Estates of their Debtors in their Hands; and who by Cunning, by Force, and a hundred Pretences, have made private Bargains with Debtors, who sign Compositions for a Colour, and to draw other Men in, but get private Bonds, collateral Securities, and the like, from the poor Debtor, to bring them to that Compliance. This Act will be a Day of Judgment to such People, and honest Men will now see who rob'd them. These Men I take to be worse Cheats than the Bankrupt, because they drive a Man into a Crime, by such a Force which they know the Necessity of his Affairs will not suffer him to resist. They are Thieves of other Mens Estates; for though they seek but
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a just Debt, and that is their Excuse ; yet they prompt the poor Man to pay them, what they know is none of his own.

The Debtor, 'tis true, is equally in Debt to every Creditor separately, and ought to pay them the whole ; but after a Fraction, and he is unable to discharge the particular Obligation, he becomes then oblig'd to them all as a Body, and in Honesty must not pay one more in Proportion than another ; he that does is not honest, and he that prompts him to do it to obtain any Relaxation, or Abatement of Prosecution, is a worse Knave than he ; that Creditor that takes it wilfully, and in such a manner, is an accessory to one of the worst of Cheats. And let him be who he will, he is a Destroyer of other Mens Property, and a Robber of his Neighbour.

That this Act will make Abundance of such Frauds as these publick, I make no doubt ; and that the guilty must refund, I believe they do not doubt ; and I question not, but this is the principal Reason, why some People fly out against the Act, and against me for my Share in it :----- And let them rail, their Guilt makes them angry, but honest Men will share in the Restitution they must make, and that's my Satisfaction : I take them all to be politick Thieves, and rejoice to see them come off so well, and not fare like Thieves of less Guilt, that die only because they have the Misfortune to come within the Letter of the Law.

Let no Bankrupt therefore blush to own, what cruel Creditors have lain hard upon them to do, whom they have made wrong their other Creditors, to give them private Satisfaction. This Law is made not to punish you for the Concealment, but them for the Encroachment, and to bring them to Restitution, that honest Creditors may stand upon the same foot with them ; and Compositions make a better Show than they used to do.

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And I cannot omit here, what I purposely reserv'd to this Place, that this Act will produce this Benefit to Trade among the rest, that most Bankrupts will make better Compositions than before; and there are Abundance of Reasons to be given for it;

1. The tedious Expences of securing, and coming at the Effects will be shortned.
2. The Easiness of Concealments will be straightned, and the Occasion of them in part removed.
3. Clandestine, collateral, and seperate Agreements with Creditors, and partial, private Payments be effectually destroyed.

All which will contribute to preserve the Estate of the Bankrupt, and consequently make the Dividend the larger.

That the Division of the Bankrupt's Estate will be sooner, is a thing I need not spend time about, because 'tis apparent it must come sooner into the Hands of the Commissioners; and the Bankrupt will be always assistant to the collecting and recovering it, which, as it has been, cannot often be had.

But to return to the Danger of the Debtor in his surrendering his Effects to his Creditor.

Every forgotten Debt, which may be really owing to the Bankrupt, and which in his Accompt he may not have given in, will not expose him to the Penalty of this Act: 'Tis true, if after such Surrender, the Bankrupt should go about to receive the Money, and apply it to his private Use, or should be put in mind of such a Debt owing to him, and should not immediately discover it, he would in either of those Cases incur the Penalty, and deservedly suffer it.

I would therefore, *in this Case*, to avoid the Censure and Misconstructions of Mankind, and to remove the Opportunity and Advantages any Man *might make* of other's Infirmi-

ty; I would, I say, recommend to every Bankrupt, that comes in, and claimes the Benefit of this Act, under the Account of his Affairs, which he gives, *and before his Oath*, to subscribe some short Proviso like this:

“ **I** A. B. do farther declare, That if there be *any Error* in the said Accounts, or if any Debt due, or to grow due to me from any Person, *not inserted* in this Account, or any Goods or Effects of mine remaining in any Persons Hands, not mentioned and discovered in this said Account; it is not wilfully made, omitted, or conceal’d, and shall be faithfully discover’d, rectify’d, and surrender’d, as soon as it shall occur to my Knowledge and Remembrance.

I am not insensible, that Men whose Affairs are declining, are not always *the exactest People* in their Books: ’Tis a melancholy thing to be always ballancing *Accompts of Loss*; there is something unpleasant in the very Aspect of things, when *all goes to rack*; Omissions, Mistakes, and forgotten Articles are never so frequent, as when Men, knowing they are *playing a losing Game*, grow desperate, and care not which way things go; and in these Hurries it may happen, that an honest well-meaning Man may forget both a Debt or a Credit; a great many little Clauses may slip his Memory, and yet really design no wrong. God forbid Men should be hang’d for forgetting, while no Fraud is intended in the Design: Let such therefore not fear; the Law is not designed for a Trap to catch Men upon Advantages; Commissioners and Commissioners are not Ambuscades to surprize Men.----- I would therefore have no Man fear, in such Cases, to make an honest Discovery, nor to come again if afterwards he finds any thing has slippt his Memory, and honestly discover and restore it: Such a Man will meet with Encouragement, not.

not Reproach ; and the Honesty of a second Discovery will be a Confirmation of the Sincerity of the First.

This Law is made to encourage *honest Men*, and to punish *Knaves* : 'Tis made to make *Knaveish Debtors* deliver, and *Knaveish Creditors* refund ; and in this it seems to have in it all the parts of a perfect Law.

I have been told the Lawyers are hard at work to find out *some Flaws* in this Act, and studying how they may still *hamper the Debtor* after he has done all the Act requires, and is actually discharged :----- And really I would have those Gentlemen go on with their pious Endeavours ; the Discovery of their Designs will only clear the way for the Parliament *another Sessions* to add such Clauses, as, *if need be*, shall farther explain and determine all the Doubts remaining, and bar all the Back-Doors and Outlets to Knavery on one Hand, and Cruelty on the other.

There may, *for ought I know*, be one publick Misfortune in this Bill ; with which I shall close this Account, and, if possible, propose an equivalent.

The Mischief I speak of is, to the Manufacture of *Bumming* and *Bullying*, which will be in great Danger of being lost, to the Ruin and impoverishing Abundance of poor industrious Families, who are now maintain'd by the laudable Employment of *Bayliffs*, *Bayliffs Followers*, *Sergeants*, *Teomen*, *Marshall's-Men*, and all the worthy *et cetera's* of *Setters*, *Spungers*, *Appraisers*, *Brokers*, *Spunging Houses*, *private Prisons*, and the like, who now live on the Life Blood of *Trades-men*, and help pull down those, that are falling fast enough of themselves.

Add to these, the Fall of Rents in the *Mint* and *Rules*, where Bills begin to be seen upon the Doors already, by the Multitude of People, who, *Creditors finding this Act will at last compel them to it*, begin to agree with, and voluntarily release ;-- and where in time the like Desolation may be probable to ensue, as already has happen'd in *White-Fryers*.

III *Jays* will also be Sharers in this Disaster, *Waiters, Tenders, Turnkeys, &c.* will lose their Fees; and those Nests of Cruelty and Misery be like a Cage without a Bird.

IV Multitudes of laborious People, call'd *Sollicitors*, and *petty fogging Attorneys, Hackney-Bails, Affidavit-Men*, and the like, may now be in Danger to lose their Employment, lose the Opportunity of taking large Pay for doing *no Business*, and charging double Fees for leaving People *worse than they find them*.

Now as as this can no way be immediately prevented, I cannot think I am able to say any thing more to their Consolation than to propose *some Equivalent* to prevent the entire Ruin of so many *Diligent People*, and their *Dependents*.

And that this may be effectual, I shall divide it as I have done the People.

I. As to the Fraternity of the *Catchpoles*, I propose to them honestly, and for the Good of their Country, to assemble together, and make a Detachment of Ten Thousand able-body'd Men out of their Society, *a Number they can very well spare*, and offer their Service on board Her Majesty's Fleet, to fight in Defence of the Kingdom, and make amends for the Damage they have done at Home, by ruining many Thousand honest Families they might have sav'd; and this 'tis plain, they may do, and yet leave enough of their Trade to execute all the necessary part of the Law.

2. As to the Attorneys, Solicitors, &c. they may turn their Hands to the more Laudable Practice of picking Pockets, *according to the Letter of it*, and then in time may meet with the Reward of their *former Merit*, by a way they have often deserv'd it.

All the rest, applying to honest Livelihoods, may be pardon'd, and live to give God Thanks, with the rest of the Nation, for the Blessing of this Act of Parliament.

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